

REMARKS

By this Office Action, the Examiner has required restriction to one of the following inventions under 35 U.S.C. §121:

Group I. Claim(s) 1-16, 18-20 and 29-30 are drawn to a complement, composition and fusion with said complement.

Group II. Claim(s) 17 is drawn to an antibody.

Group III. Claim(s) 21-26 are drawn to a nucleic acid, antisense nucleic acid, vector and host cell.

Group IV. Claim(s) 27 is drawn to a method of preparing a complement inhibitor.

Group V. Claim(s) 28 is drawn to a method of identifying a ligand.

Group VI. Claim(s) 32 and 34 are drawn to a method of treating an animal.

Group VII. Claim(s) 35 and 37-38 are drawn to a method of vaccinating.

Group VIII. Claim(s) 40 is drawn to a method for inhibiting the classical and alternative complement pathways

Responsive to the Requirement for restriction, Applicants elect to prosecute the invention of Group I, with traverse, Claim(s) 1-16, 18-20 and 29-30 are drawn to a complement, composition and fusion with said complement. It is, however, believed that Group I is directed to a complement inhibitor, rather than a complement as stated by the Examiner. Clarification regarding this issue is respectfully requested.

Applicants respectfully request reconsideration of the Requirement for Restriction, or in the alternative, modification of the Restriction Requirement to allow prosecution of more than one group of Claims designated by the Examiner in the present Application, for the reasons provided as follows.

Under 35 U.S.C. §121 "two or more independent and distinct inventions ... in one Application may ... be restricted to one of the inventions." Inventions are "'independent'" if "there is no disclosed relationship between the two or more subjects disclosed" (MPEP 802.01). The term "'distinct'" means that "two or more subjects as disclosed are related ... but are capable

of separate manufacture, use or sale as claimed, AND ARE PATENTABLE OVER EACH OTHER" (MPEP 802.01) (emphasis in original). However, even with patentably distinct inventions, restriction is not required unless one of the following reasons appear (MPEP 808.02):

1. Separate classification
2. Separate status in the art; or
3. Different field of search.

Further, under Patent Office Examining Procedures, "[i]f the Search and Examination of an entire Application can be made without serious burden, the Examiner must examine it on the merits, even though it includes claims to distinct or independent inventions" (MPEP 803, Rev. 8, May 1988) (emphasis added).

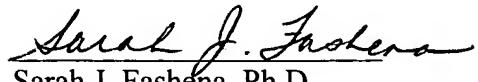
Applicants respectfully submit that the groups designated by the Examiner fail to define compositions and methods, with properties so distinct as to warrant separate Examination and Search. Claim 27 of Group IV is drawn to a method of preparing a complement inhibitor, which is fundamentally related to Claims 1-16, 18-20 and 29-30 of Group I, drawn to a complement, composition and fusion of said complement (as indicated above, Applicants believe that this should refer to a complement inhibitor). The search for any of the methods separately classified by the Examiner as the invention of Group IV would require an additional search of the identical classes wherein the claims of Group I are classified, thus resulting in a duplicate search for the same material. Thus, Applicants submit that the Search and Examination of the entire Application, or, at least, of Group IV with Group I can be made without serious burden, and therefore the Examiner should examine all of the claims of the Application on the merits.

The Examiner's assertions to the contrary notwithstanding, Applicants respectfully submit that conjoint examination and inclusion of all of the Claims of the present Application would not present an undue burden on the Examiner, and accordingly, withdrawal of the Requirement for Restriction, or, at the least, modification to include the Claims drawn to Group IV and Group I is in order.

No fees are believed to be necessitated by the foregoing Response. However, should this be erroneous, authorization is hereby given to charge Deposit Account No. 11-1153 for any underpayment, or credit any overages.

In view of the above, an early action on the merits of the Claims is courteously solicited.

Respectfully submitted,

  
Sarah J. Fashena, Ph.D.  
Agent for Applicant(s)  
Registration No. 57,600

KLAUBER & JACKSON LLC  
411 Hackensack Avenue  
Hackensack, New Jersey 07601  
(201) 487-5800

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